

MICHAEL W. ADAMS
Claimant

ELDRIDGE FENCE

AND

TRAVELERS INSURANCE COMPANY

Docket No. 248,872

ISSUES

- “(1) Whether the claimant suffered an accidental injury arising out of and in the course of his employment with respondent.
- “(2) Whether the respondent is required to pay temporary total disability compensation to the claimant until he is actually employed within medical restrictions after the claimant has voluntarily refused employment with the respondent within the restrictions of the treating physician and then the accommodated job becomes unavailable.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant alleges accidental injury with respondent on both his first and his last days of employment. The dates in question are somewhat confused in the record. Claimant testified originally that he was injured on June 12, 1999, while lifting a heavy pipe, and on June 23, 1999, while moving a bundle of mesh fencing. The evidence in the record indicates claimant was not working for respondent on June 12, 1999. Claimant then testified that the injury occurred on the first day he was paid to work, but he acknowledges being a poor historian.

Claimant also originally testified to an injury on June 23, 1999. When the record showed that claimant worked through June 29, 1999, he then testified that the injury occurred on his last day worked. Again, claimant stated that he is poor with dates, but he remembers the injury being on his first paid day and on his last day worked.

Claimant testified that Walter Eldridge, the owner of the company, heard his back pop on the first date of accident. Mr. Eldridge testified, but was not asked to comment about this described incident. Claimant also testified that, on the last day worked after reporting the injury, he was told by Mr. Eldridge that co-employees would take him to Hoisington, Kansas, to the doctor and then, after the doctor's visit, would return him to his work site. Again, Mr. Eldridge was not asked to comment on this scenario.

In workers' compensation litigation, the burden of proof is on claimant to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 1998 Supp. 44-501 and K.S.A. 1998 Supp. 44-508(g).

Respondent argues that claimant has failed to meet his burden, but the Board will not deny claimant benefits solely due to claimant's poor historical abilities. The Appeals Board acknowledges that the claimant's abilities with dates are somewhat lacking, but does not find the claimant's confused testimony to be so unreasonable as to be disregarded. In addition, respondent had the opportunity, through the testimony of Mr. Eldridge, to contradict the claimant's allegations regarding the specific incidents on the dates of accident, and elected to not act on that opportunity. Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand & Gravel, Inc., 221 Kan. 191, 558 P.2d 146 (1976).

The Appeals Board finds, based upon the evidence in the record, that claimant has proven that he suffered accidental injury arising out of and in the course of his employment with respondent on both his first day worked and his last day worked. The Appeals Board, therefore, affirms the Administrative Law Judge's finding regarding whether claimant

suffered an accidental injury arising out of and in the course of his employment on the dates alleged.

Respondent's second issue deals with whether the Administrative Law Judge exceeded his jurisdiction in granting claimant temporary total disability compensation after claimant voluntarily refused employment with respondent within the restrictions of the treating physician. The Board acknowledges the record is confusing regarding what restrictions claimant was released under and whether claimant was offered a job within those restrictions. However, claimant's entitlement to temporary total disability compensation is a decision well within the authority and jurisdiction of an administrative law judge at preliminary hearings. This is not an issue which is appealable from a preliminary hearing. See K.S.A. 1999 Supp. 44-534a and K.S.A. 1999 Supp. 44-551. The Appeals Board will, therefore, dismiss respondent's appeal on that issue.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated December 10, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 2000.

BOARD MEMBER

c: M. John Carpenter, Great Bend, KS
Jerry M. Ward, Great Bend, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director